

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3223 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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OMKARESHWAR CO-OPERATIVE HSG. SOCIETY LTD.

Versus

STATE OF GUJARAT

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Appearance:

MR SK JHAVERI for Petitioner

Mr.N.N.Pandya,AGP for Respondents.

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/06/96

ORAL JUDGEMENT

Heard the learned advocates for the parties. The petitioner society purchased land admeasuring about 60000 square ft. comprising in s.n.307/1 and 307/3 situated at Bavanpura,Pratapnagar Road, near Khandra temple,Vadodara under the registered sale deed dated 22nd November, 1962.This land originally belonged to Aumkareshwar Mahadev Trust. The said land has been sold after

Aumkareshwar Mahadev Temple Trust was granted permission for doing so under section 36 of the Bombay Public Trusts Act, 1950 by the Charity Commissioner. The petitioners applied for grant of permission for conversion of land from agricultural to non-agricultural use on 24th July, 1981. The Collector, Baroda, authority competent to grant such permission declined to grant the permission on the ground that there were 80 unauthorised hutmen on the southern and eastern boarder of the land in question. This intimation has been sent by the Collector, Baroda under his letter dated 20th October, 1981. The petitioner thereupon, by mutual understanding, got removed those hutmen from the land in question and, thereafter, the petitioners made another application on 22nd October, 1981. In the said application, it has been mentioned that the hutmen have been removed by the petitioners. As the permission for conversion of use of the land from agricultural to non-agricultural was earlier refused only on the ground of there being about 80 hutmen on the part of the land, the Collector after satisfying itself on the question that the hutmen had been got removed by the petitioners, under its letter dated 30th November, 1981, granted permission to the petitioner as prayed for. Thereafter, the petitioner filed application to the Baroda Municipal Corporation for grant of necessary sanction to the construction plans. The Municipal Corporation, after satisfying itself in the matter, under its letter dated 2nd January, 1982, accorded necessary permission for construction of the lands to the petitioners. After getting the plans for construction sanctioned, the petitioner stated that the construction will start from 11th February, 1982 and by the time, the petition is filed. The Construction had come up to the plinth level nearby lintel level and considerable amount has been spent by the petitioners for construction.

2. These facts have not been controverted by the respondents. It appears that the State Government has taken suo-motu action and show cause notice was given to the petitioner by the Secretary (Appeals) Revenue Department dated 10th May, 1982 calling upon it to show cause as to why the permission granted by the Collector on 30th November, 1981 should not be cancelled by revising the said order under section 211 of the Bombay Land Revenue Code. It had been mentioned under the show cause notice that the State Government has suo-motu initiated proceedings for cancellation of permission granted in favour of the petitioners for conversion of land used by the petitioner on the ground that it has no authority to review its own order. Earlier, it declined

the permission and as such, he could not have passed the order. Another ground for cancellation of the order is that the Aumkareshwar Mahadev Trust was granted permission under section 19(1)(4) of the Urban Land (Ceiling and Regulation) Act, 1976 ("ULC Act" for short) on a condition that the trust would have to seek necessary exemption for the purpose if it intended to transfer the said lands. The petitioner society has made a statement in the petition that necessary permission for transfer of the land in question has been granted by the competent authority to the trust under the provisions of the ULC Act, 1976. This fact has also not been controverted by the respondents. The petitioner society submitted detailed written objections to the said show cause notice of the State Government but the State Government vide its order dated 19th July, 1982 cancelled the order of the Collector dated 30th November, 1981 and, hence, this petition by the petitioner society before this Court.

3. The learned counsel for the petitioner contended that the operation of the impugned order passed by the State Government dated 19th July 1982 has been stayed by this Court and, thereafter, the petitioner society has raised construction on the land in question and its members are now occupying the respective premises. On 6.8.82, this Court was pleased to issue notice to the respondents and interim relief in terms of para 26(b) of the petition has been granted, which reads as under:

"26(B): Pending the final hearing and disposal of this petition, the Honourable Court may be pleased to suspend the operation and execution of the order at Exh. "F" passed on 19th July, 1982 being No. SRD/LND/B.107/82 of the office of the Secretary (Appeal) Revenue Department at Multi Storeyed Building Lal Darwaja, Ahmedabad and be pleased to restore the NA Permission dated 30th November 1981 granted by the Collector Baroda."

4. By this interim relief granted in favour of the petitioner, this Court restored the NA Permission granted by the Collector under its order dated 30th November, 1981. The construction permission has also been granted by the Municipal Corporation, Baroda and which has not been cancelled. Statement made by the learned counsel for the petitioner that after the order passed by this court, construction has been raised has not been controverted by the respondents. This fact cannot be ignored and now it will not be in the larger interest of the members of the society as well as the society to

allow it to demolish. In fact, the petition stands decided in favour of the petitioner at the stage of grant of interim relief. Members of the petitioner society may be medium class persons who may have raised the funds for purchase of residential premises with great difficulties. That is the reason that time and again, Apex Court is giving a note of caution that the relief of the nature which should be granted at the final stage of the matter should not be granted by way of an interim relief. The purchasers of the premises from the petitioner society will not be aware of this litigation and would have purchased it bonafide. Now, at this stage, in case, ultimately, if this court declines to accept the petition, consequences thereof would be the demolition of the construction over the land by the authority competent under the Act. How heavily it would come upon those persons who would have gone bona fide for the purchase of the houses.

5. So far as the second ground which has been given by the State Government for the cancellation of the order passed by the Collector concerned, it need not be allowed to stand. The ULC Act has come into force in the year 1976 whereas the petitioner has purchased the lands in question in the year 1962 by registered sale deed and after a permission has been granted for the same by the Charity Commissioner, to the trust. Even if this condition imposed by the competent authority under the ULC Act that the society, in case, desires of transferring the land, then, it has to obtain permission is there but it may not have a material bearing on the question because of the reason that the sale deed is of the year 1962 and secondly the petitioner has come up with a case that the necessary permission for transfer of the land has been granted to the trust by the competent authority also under the ULC Act, 1976. The only ground that the collector has no power to review his own order, I did not consider it to be an appropriate where any final opinion should be given on this issue. Learned counsel for the petitioner, though, contended that this is not a case of review but it is only a case where order has been passed first time. Earlier order passed by the collector was not in fact and in substance an order declining permission for conversion of land use. It was a case where because of existence of hutments on the part of the land in question, the Collector declined to pass the order. I do not consider again it necessary to go into this contention of the learned counsel for the petitioner. It is suffice to say that the permission has been granted for conversion of land use by the competent authority and further Vadodara Municipal Corporation has sanctioned the plan of construction

submitted by the petitioner and the construction has also been made on the land may be as this Court granted interim relief. In view of these facts, it is in larger interest of the parties that the order of the State Government be set aside. This is the only technical ground on which the State Government set aside the order. Learned counsel for the respondent has failed to show and establish how any loss is suffered by the State Government in case the order of the Collector is allowed to maintain. The State has not come out with a case that this land is required for any public purpose. Moreover, when the ULC Authority also granted permission for transfer of the land in question, it is clearly borne out therefrom that it also have no objection of raising of the construction by the petitioner society on the land in question.

Taking into consideration the totality of the facts of the case, and also a fact that under the order of this court, the petitioner society raised construction on the land in question and the members have now come in possession of the respective premises, the petition deserves acceptance and the order passed by the Government cancelling the order of the Collector, Vadodara is required to be quashed and set aside.

6. Accordingly, this petition is allowed. The impugned order dated 19th July, 1982 (Annexure "F" to the petition) passed by the State Government cancelling the order passed by the Collector, Vadodara dated 30th November, 1981 is hereby quashed and set aside. Rule is made absolute. No order as to costs.

21.6.96  
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[S.K.Keshote, J.]